

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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REYNOLD B. SILAS,,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, DETECTIVE "JOHN DOE"
(SHIELD # UNKNOWN) Individually and in his Official
Capacity, THE CITY OF YONKERS, THE CITY OF
YONKERS POLICE DEPARTMENT, DETECTIVE
CAVE OF THE CITY OF YONKERS POLICE
DEPARTMENT (SHIELD # UNKNOWN) Individually
and in his Official Capacity, THE HOME DEPOT, INC.
d/b/a HOME DEPOT, and HOME DEPOT U.S.A., INC.
d/b/a HOME DEPOT,

Defendants.
-----X

Docket No.:

**PETITION FOR
REMOVAL OF ACTION
UNDER 28 U.S.C.
§1441(a) FEDERAL
QUESTION**

**TO THE CLERK OF THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK:**

PLEASE TAKE NOTICE that Defendants THE HOME DEPOT, INC. d/b/a HOME
DEPOT and HOME DEPOT U.S.A., INC. d/b/a HOME DEPOT (collectively, "Home Depot"),
hereby submit this Petition for Removal, with full reservation of all defenses, from the Supreme
Court of the State of New York, County of Kings, to the United States District Court, EASTERN
DISTRICT of New York in accordance with 28 U.S.C. §1446 and respectfully represent as follows:

PLAINTIFF'S COMPLAINT AND NATURE OF THE ACTION

1. On November 2, 2018, this action was filed with the Court against Home Depot in the
Supreme Court of the State of New York, County of Kings, Index Number 522086/2018. Pursuant
to 28 U.S.C. §1446(a), copy of the Summons/Complaint is annexed hereto as **Exhibit "A."**

2. In his Complaint, Plaintiff alleges personal injuries and civil rights violations arising from an incident which occurred on December 23, 2015 at 601 South Sprain Road, Yonkers, New York 10710. **Exhibit “A.”**

3. Home Depot was served on November 15, 2018. **Exhibit “B.”**

4. Defendants THE CITY OF YONKERS, THE CITY OF YONKERS POLICE DEPARTMENT and DETECTIVE CAVE OF THE CITY OF YONKERS POLICE DEPARTMENT served their Answer on December 7, 2018. Pursuant to 28 U.S.C. §1446(a), a copy of the Answer and Affidavit of Service is annexed hereto as **Exhibit “C.”**

5. On December 10, 2018 Counsel for Home Depot filed a Notice of Appearance. Pursuant to 28 U.S.C. §1446(a), a copy of the Notice of Appearance is annexed hereto as **Exhibit “D.”**

JURISDICTION IS PROPER

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1343.

7. The Complaint alleges that “this is a civil action seeking monetary relief against Defendants THE CITY OF NEW YORK; THE NEW YORK CITY POLICE DEPARTMENT; DETECTIVE “JOHN DOE” (SHIELD #UNKNOWN) Individually and in his Official Capacity; THE CITY OF YONKERS; THE CITY OF YONKERS POLICE DEPARTMENT; DETECTIVE CAVE OF THE CITY OF YONKERS POLICE DEPARTMENT (SHIELD #UNKNOWN) Individually and in his Official Capacity; and Home Depot. for committing acts of false arrest, false imprisonment, negligent detention, excessive detention, negligent infliction of emotional distress, intentional infliction of emotional distress, battery, menacing, harassment, excessive force, police brutality, negligent hiring/training/retention, negligence, gross negligence, reckless disregard, abuse of process, municipal liability, malicious prosecution, violation of rights protected under the United

States Constitution, violation of rights protected under the Constitution of New York, violation of civil rights under 42 USC Section 1983.” Complaint ¶¶ 1, 2, 23, and 24 **Exhibit “A.”**

8. The Complaint also alleges that “As a result of the aforementioned occurrence, plaintiff REYNOLD B. SILAS was deprived of his civil rights under the Constitution of the State of New York and the Constitution of the United States, as well as other State ordinances, statutes, codes and rules, including 42 U.S.C.A. §§ 1981, 1983, 1985 and 28 U.S.C.A §1343. Complaint ¶ 42, **Exhibit “A.”**

THE COMPLAINT ALLEGES THAT THIS IS A CIVIL RIGHTS CLAIM

9. This firm represents Home Depot.

10. Defendants seek removal of this action pursuant to 28 U.S.C. §1441(a), which permits removal of any civil action brought in a State court of which the districts courts of the United States have original jurisdiction.

11. Pursuant to 28 U.S.C. section 1343, "the district courts have original jurisdiction of any civil action authorized by law to be commenced by any person (1) to recover damages for injury to his person or property or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42."

12. For the purposes of establishing original jurisdiction of the federal district court, the plaintiff alleges that he was deprived of his civil rights un the Constitution of the State of New York and the Constitution of the United States, as well as other State ordinances statutes, codes and rules including U.S.C.A. §§ 1981, 1983, 1985 and 28 U.S.C.A. § 1343. Complaint ¶ 42, **Exhibit “A.”**

13. This Court has supplemental jurisdiction over all other claims alleged by the plaintiffs under 28 U.S.C. 1367(a) because all other claims alleged are so related to claims in the action within

such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

14. Further, all other claims alleged by the plaintiffs do not raise a novel or complex issue of State law, nor do they substantially predominate over the claims over which the District Court has original jurisdiction and therefore the District Court should not decline to exercise supplemental jurisdiction under 28 U.S.C. 1367(c).

15. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441(a).

REMOVAL IS TIMELY

16. Pursuant to 28 U.S.C. §1446(b), which provides that a Notice of Removal shall be filed within thirty (30) days after receipt by defendant, by service or otherwise, of the initial pleading or of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, this Petition for Removal is timely filed.

17. Plaintiff filed the Summons and Complaint on November 2, 2018. Home Depot was served on November 15, 2018. Removal is thus timely.

NOTICE

18. Pursuant to 28 U.S.C. §1446, a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of Kings.

VENUE IS PROPER

19. The United States District Court for the EASTERN DISTRICT of New York includes the county in which the state court action was pending (Kings) and thus, pursuant to 28 U.S.C. §124(b)(2), venue is proper.

ALL DEFENDANTS HAVE CONSENTED TO REMOVAL

20. Pursuant to the requirements of 28 U.S.C. § 1441(c)(2) all defendants have consented to the removal of this action to the United States District Court for the Eastern District of New York.

RESERVATION OF DEFENSES AND RIGHTS

21. Home Depot reserves all defenses, including, without limitation, the defense of lack of personal jurisdiction.

22. Home Depot reserves the right to amend or supplement this Petition for Removal.

23. If any question arises as to the propriety of the removal of this action, Home Depot respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

THEREFORE, all parties to the Civil Action pending in the Supreme Court of the State of New York, County of Kings, Index No. 522086/2018 are HEREBY NOTIFIED pursuant to 28 U.S.C. §1446 and Local Civil Rule 81.1, as follows:

Removal of the Civil Action and all claims and causes of action therein is effected upon the filing of a copy of this Notice of Removal with the Clerk of the State Court pursuant to 28 U.S.C. §1446. The Civil Action is removed from the State Court to the United States District Court, EASTERN DISTRICT of New York. The parties to the Civil Action shall proceed no further in the State Court.

WHEREFORE, Home Depot prays that this cause of action now pending in the Supreme Court of the State of New York, County of Kings, be removed to the United States District Court, EASTERN DISTRICT of New York.

Dated: New York, New York
December 14, 2018

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused the **PETITION FOR REMOVAL OF ACTION UNDER 28 U.S.C. §1446(a) DIVERSITY and RULE 7.1 DISCLOSURE** to be served on Friday, December 14, 2018 via CM/ECF upon the attorneys of record for all parties.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Renee E. DeMott

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